



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 28 मार्च, 2013 / 7 चैत्र, 1934

हिमाचल प्रदेश सरकार

आबकारी एवं कराधान विभाग

अधिसूचना

शिमला-171002, 26 मार्च, 2013

संख्या ई0एक्स0एन0-एफ(10)-7/2011.—हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश मूल्य परिवर्धित कर नियम, 2005 के नियम 40क और सैन्ट्रल सेल्ज टैक्स (हिमाचल प्रदेश) रूलज, 1970 के रूल 7(1-A) के अधीन उनमें निहित शक्तियों का प्रयोग करते हुए अधिसूचित करती हैं कि व्यौहारियों के निम्नलिखित वर्ग, विवरणियों को अनिवार्यतः इन नियमों के उपबन्धों के अनुसार प्रथम अप्रैल, 2013 से आबकारी एवं कराधान विभाग की वेबसाईट पर समस्त अपेक्षित सूचनाएं इलैक्ट्रॉनिकली अपलोड करके दाखिल करेंगे : —

“यथास्थिति, हिमाचल प्रदेश मूल्य परिवर्धित कर अधिनियम, 2005 या केन्द्रीय विक्रय कर अधिनियम, 1956 के अधीन रजिस्ट्रीकृत समस्त व्यौहारी जिनका वार्षिक आवर्त 40 लाख रुपए या इससे अधिक है।”

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (आबकारी एवं कराधान)।

[Authoritative English text of this Department notification No. EXN-F(10)-7/2011, dated 26-03-2013 as required under clause (3) of Article 348 of the Constitution of India.]

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla-171002, the 26th March, 2013

No. EXN-F(10)-7/2011.—In exercise of the powers vested in her under under Rule 40A of the Himachal Pradesh Value Added Tax Rules, 2005 and Rule 7(1-A) of the Central Sales Tax (Himachal Pradesh) Rules, 1970, the Governor of Himachal Pradesh, is pleased to notify that the following Class of dealers shall compulsorily file the returns electronically by way of uploading all the requisite information on the website of Excise and Taxation Department with effect from 1st April, 2013 in accordance with the provisions of the respective Rules :—

“All dealers registered under the Himachal Pradesh Value Added Tax Act, 2005 or the Central Sales Tax Act, 1956, as the case may be, having annual turnover of ₹40 lakhs and above”.

By order,
Sd/-
Principal Secretary (E&T).

लोक निर्माण विभाग

अधिसूचना

शिमला—2, 24 मार्च, 2013

सं० पी०बी०डब्ल्यू० (बी०)एफ०(5) 100/2010—I.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः उप महाल खंवागी, तहसील कल्पा, जिला किन्नौर में सीमा सड़क संगठन कैम्प पंवारी के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भू-अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उस धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. भूमि का रेखांक का निरीक्षण कार्यालय भू-अर्जन समाहर्ता, हिमाचल प्रदेश, लोक निर्माण विभाग (दक्षिण क्षेत्र), विन्टर फिल्ड, शिमला-3 में किया जा सकता है।

विवरणी

जिला	तहसील	गांव	खसरा नं०	रकवा (है० में)
किन्नौर	कल्पा	खवांगी	758	0-08-37
			512	0-05-28
किता : 2				0-13-65

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (लोक निर्माण)।

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 24 मार्च, 2013

सं० पी०बी०डब्ल्यू० (बी०)एफ(5) 14/2012.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव मुबारिकपुर, तहसील अम्ब, जिला ऊना में जालन्धर-होशियारपुर-गगरेट-मुबारिकपुर-अम्ब-नादौन-हमीरपुर-अवाहदेवी-टोणीदेवी-धर्मपुर-मण्डी उच्च मार्ग 70 को चौड़ा करने हेतु भूमि अर्जित करनी अपेक्षित है, अतः एव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि-अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के तीस दिन की अवधि के भीतर लिखित रूप में भू-अर्जन समाहर्ता, लोक निर्माण विभाग, मण्डी, (हि० प्र०) के समक्ष अपनी आपत्ति दायर कर सकता है।

विवरणी

जिला	तहसील	गांव	खसरा नं०	रकवा (है० में)
ऊना	अम्ब	मुबारिकपुर	1242 / 1	00-07-11
किता : 1				00-07-11

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (लोक निर्माण)।

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 26 मार्च, 2013

सं० पी०बी०डब्ल्यू० (बी०)एफ(5) 3/2012.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु गावं पलाहटा, तहसील अर्की, जिला साले न में शालाघाट-सूर्या सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतःएव एतद्वारा यह घोषित किया जाता है कि निम्नलिखित विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है।

2. यह घोषणा, भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-7 के अधीन भू-अर्जन समाहर्ता लोक निर्माण विभाग विन्टर फिल्ड, शिमला को उक्त भूमि के अर्जन करने के आदेश लेने का एतद्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता, लोक निर्माण विभाग विन्टर फिल्ड, शिमला के कार्यालय में किया जा सकता है।

विवरणी

जिला	तहसील	गावं	खसरा नं०		रकबा (है० में)
			सा०	हाल	
सोलन	अर्की	पलाहटा	4 मिन	9	0-1-18
कित्ता : 1					0-1-18

आदेश द्वारा,
हस्ताक्षरित/-
प्रधान सचिव (लोक निर्माण)।

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 25th March, 2013

No. HHC/Admn. 3 (221)/86-I.—12 days earned leave on and w.e.f 1.04.2013 to 2.04.2013 with permission to prefix Sunday falling 31.03.2013 and suffix Second Saturday, Sunday and Gezzetted holidays falling on 13.04.2013 to 15.04.2013 is hereby sanctioned in favour of Shri Ravinder Sharma, Court master of this Registry.

Certified that Shri Ravinder Sharma is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Ravinder Sharma would have continued to officiate the same post of Court master, but for his proceeding on leave.

By order,
Sd/-
Registrar General.

आयुर्वेद विभाग

अधिसूचना

शिमला-2, 23 मार्च, 2013

संख्या आयु0-ए-(3)-9/2010.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश आयुर्वेद विभाग में वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ), वर्ग-I (राजपत्रित) के पद के लिए इस अधिसूचना से सलंगन उपाबन्ध- “क” के अनुसार, भर्ती और प्रोन्नति नियम, बनाती हैं, अर्थात्:-

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश आयुर्वेद विभाग, वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ), वर्ग-I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2013 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. **निरसन और व्यावृत्तियां.**—(1) इस विभाग की अधिसूचना संख्या: स्वास्थ्य-ए (3)-5/87 तारीख 16-2-1989 द्वारा अधिसूचित हिमाचल प्रदेश भारतीय चिकित्सा पद्धति और होम्योपैथी विभाग वर्ग-2 सेवा ज्येष्ठ आयुर्वेदिक चिकित्सक पद, (राजपत्रित) भर्ती एवं प्रोन्नति नियम, 1989 का एतद्वारा निरसन किया जाता है।

(2) ऐसे निरसन के होते हुए भी उपर्युक्त उप-नियम 2(1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्यवाई इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी।

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव (आयुर्वेद)।

उपाबन्ध- “क”

हिमाचल प्रदेश आयुर्वेद विभाग में वरिष्ठ आयुर्वेदिक चिकित्सक (विशेषज्ञ), वर्ग-I (राजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम

1. **पद का नाम.**—वरिष्ठ आयुर्वेदिक चिकित्सक (विशेषज्ञ)
2. **पदों की संख्या.**—18 (अठारह)
3. **वर्गीकरण.**—वर्ग-I (राजपत्रित)
4. **वेतनमान.**—(i) नियमित पदधारियों के लिए वेतनमान.—15600-39100 /—रुपए जमा 6600 /—रुपए ग्रेड पे।
(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां.—स्तम्भ 15-क में दिए गए ब्यौरे के अनुसार 22,200 /— रुपए।
5. **चयन पद अथवा अचयन पद.**—चयन।

6. सीधी भर्ती के लिए आयु.—45 वर्ष और इससे कम

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो तो, वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों तथा अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश के अधीन अनुज्ञेय है :

परन्तु यह और भी कि पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चात्पूर्वी ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/ किए गए हैं और उन पब्लिक सेक्टर, निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे।

(1) सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद (पदों) को आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—

(क) अनिवार्य अर्हता.—(i) भारतीय चिकित्सा केन्द्रीय परिषद/हिमाचल प्रदेश सरकार द्वारा मान्यता प्राप्त किसी संस्थान से कम से कम तीन वर्ष की अवधि की काया चिकित्सा या बालरोग या प्रसूतितंत्र या शल्यतंत्र या शालकय तंत्र या पंचकर्मा में एम0डी0(आयुर्वेद)।

(ii) सम्बंधित विशेषज्ञता में स्नातकोत्तर करने के पश्चात् किसी सरकारी/मान्यताप्राप्त संस्था(ओं) में आयुर्वेदिक चिकित्सा अधिकारी के रूप में पांच वर्ष का क्लिनिकल अनुभव।

(ख) वांछनीय अर्हता.—हिमाचल प्रदेश की रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हता(ए), प्रोन्नत व्यक्तियों की दशा में लागू होंगी या नहीं.—आयु.—लागू नहीं।

शैक्षिक अर्हता.—हां, स्तम्भ संख्या 11 के सामने यथाविहित।

9. परिवीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे।

10. भर्ती की पद्धति.—भर्ती सीधी होगी या प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता.—(i) पचास प्रतिशत प्रोन्नति द्वारा,

(ii) पचास प्रतिशत सीधी भर्ती द्वारा, यथास्थिति, नियमित आधार पर या संविदा के आधार पर नियुक्ति द्वारा, ऐसा न होने पर स्थानान्तरण द्वारा या सेकण्डमेन्ट आधार पर।

11. प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण की दशा में श्रेणियां, जिनसे प्रोन्नति/प्रतिनियुक्ति/स्थानान्तरण किया जाएगा.—कायाचिकित्सा या बालरोग या प्रसूतिचिकित्सा या शल्यतंत्र या शाल्क्यतंत्र या पंचकर्म की विशेषज्ञता में कम से कम तीन वर्ष की किसी मान्यताप्राप्त एम0डी0(आयुर्वेद) वाले आयुर्वेदिक चिकित्सा अधिकारी में से प्रोन्नति द्वारा, जिनका संबंधित एम0डी0(आयुर्वेद) की उपाधि (डिग्री) प्राप्त करने के पश्चात् संबंधित विशेषज्ञता में कम से कम पांच वर्ष का नियमित सेवाकाल या लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके पांच वर्ष का नियमित सेवाकाल हो, ऐसा न होने पर राज्य सरकार के अन्य विभागों से समतुल्य पद धारण करने वाले और समान वेतनमान में कार्यरत पदधारियों में से स्थानान्तरण द्वारा सेकण्डमेन्ट के आधार पर:

परन्तु वरिष्ठ आयुर्वेदिक चिकित्सक (विशेषज्ञ) के पद को भरने हेतु निम्नलिखित दो बिन्दु पद आधारित रोस्टर का अनुसरण किया जाएगा:

बिन्दु संख्या	वर्ग
पहला पद	प्रोन्नत व्यक्ति
दूसरा पद	सीधी भर्ती द्वारा

टिप्पण.—रोस्टर प्रत्येक दूसरे बिन्दु के पश्चात् तब तक चक्रानुक्रमित किया जाएगा, जब तक दोनों वर्ग को दी गई प्रतिशतता द्वारा प्रतिनिधित्व प्राप्त नहीं किया जाता है। तत्पश्चात्, रिक्ति उस वर्ग से भरी जाएगी जिसने पद खाली किया हो।

(I) परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जनजातीय/दुर्गम क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अध्वधीन, कम से कम एक कार्यकाल तक सेवा करनी होगी :

परन्तु यह और कि उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा, जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो :

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों को, जिन्होंने जनजातीय/दुर्गम क्षेत्र में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा ।

स्पष्टीकरण—I.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्रों में “कार्यकाल” से साधारणतया तीन वर्ष की अवधि या प्रशासनिक अपेक्षाओं और कर्मचारी द्वारा किए गए कार्य को ध्यान में रखते हुए, ऐसे क्षेत्रों में तैनाती की इससे कम अवधि, अभिप्रेत होगी ।

स्पष्टीकरण—II.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे :—

1. जिला लाहौल एवं स्पिति ।
2. चम्बा जिला का पांगी और भरमौर उप-मण्डल ।
3. रोहडू उप-मण्डल का डोडरा-क्वार क्षेत्र ।

4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष, दरकाली और ग्राम पंचायत काशापाट ।
5. कुल्लू जिला का पन्द्रह बीस परगना ।
6. कांगड़ा जिला के वैजनाथ उप-मण्डल का बड़ा-भंगाल क्षेत्र ।
7. जिला किन्नौर ।
8. सिरमौर जिला में उप-तहसील कमराउ के काठवाड और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड भलोना और संगना पटवार वृत्त और शिलाई तहसील का कोटा पाव पटवार वृत्त ।
9. मण्डी जिला में करसोग तहसील का खन्योल बगड़ा पटवार वृत्त, वाली चौकी उप-तहसील के गाडा गोसांई, मठयानी, घनयाड़ थाची, वागी, सोमगाड़, पद्धर तहसील के झारवाड़ कुटगढ़, ग्रामन, देवगढ़, ढैला, रोपा, कथरोग, सिल्ह भड़वानी, हस्तपुर, घमरेड़ और भटेढ़ पटवार वृत्त, थुनाग तहसील के चियुनी, कालीपार, मानगढ़, थाच बगड़ा उत्तरी मगरू और दक्षिण मेगरू पटवा वृत्त और सुन्दरनगर तहसील का बटवाड़ा पटवार वृत्त ।

(1) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जाएगी कि सम्भरक प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति, भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी :

परन्तु उन सभी मामलों में, जिनमें कोई कनिष्ठ व्यक्ति सम्भरक पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां अपने अपने प्रवर्ग/पद/कांडर में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्ति से ऊपर रखे जाएंगे :

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी :

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा जाएगा/समझे जाएंगे ।

स्पष्टीकरण.—अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा, यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है, जिसे डिमोबीलाईज्ड आर्मड फोर्सिज परसोनल (रिजर्वेशन आफ वैकेन्सीज इन हिमाचल स्टेट नान-टेक्नीकल सर्विसीज) रूलज, 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरीयता लाभ दिए गए हों या जिसे एक्स सर्विसमैन (रिजर्वेशन आफ वैकेन्सीज इन दी हिमाचल प्रदेश टेक्नीकल सर्विसीज) रूलज, 1985 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इसके अन्तर्गत वरीयता लाभ दिए गए हों ।

(2) इसी प्रकार स्थायीकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति/प्रोन्नति से पूर्व सम्भरक पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति, उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी :

परन्तु की गई उपर्युक्त निर्दिष्ट तदर्थ सेवा को गणना में लेने के पश्चात्, जो स्थायीकरण होगा, उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी ।

12. यदि विभागीय प्रोन्नति समिति, विद्यमान हो तो उसकी संरचना.—जैसी सरकार द्वारा समय समय पर गठित की जाए ।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा। यदि, यथास्थिति हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि, यथास्थिति आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा।

15 (क). संविदा के आधार पर सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां, नीचे दिए गए निबन्धनों और शर्तों के अधीन की जाएंगी:—

(I) सकल्पना.—(क) इस पॉलिसी के अधीन आयुर्वेद विभाग में वरिष्ठ आयुर्वेदिक चिकित्सक (विशेषज्ञ) को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष, यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा तथा आचरण, वर्ष के दौरान संतोषजनक पाया गया है और तभी उसकी संविदा अवधि नवीकृत/विस्तारित की जाएगी।

(ख) पद का हिमाचल प्रदेश लोक सेवा आयोग के कार्यक्षेत्र में आना.—प्रधान सचिव/सचिव (आयुर्वेद), हिमाचल प्रदेश सरकार, रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग के समक्ष रखेगा।

(ग) चयन, भर्ती और प्रोन्नति नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा।

(II) संविदात्मक उपलब्धियां.—संविदा के आधार पर नियुक्त वरिष्ठ आयुर्वेदिक चिकित्सक (विशेषज्ञ) को 22,200/—रुपए की समेकित नियत संविदात्मक रकम (जो पे बैंड का न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढौतरी की जाती है, तो पश्चात्वर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में 666/—रुपए की रकम (पद के पे बैंड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी।

(III) नियुक्ति/अनुशासन प्राधिकारी.—प्रधान सचिव (आयुर्वेद)/सचिव (आयुर्वेद), हिमाचल प्रदेश सरकार नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग द्वारा अवधारित किया जाएगा।

(V) संविदात्मक नियुक्ति के लिए चयन समिति.—जैसी संबद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग द्वारा समय-समय पर गठित की जाए।

(VI) करार.—अभ्यर्थी को, चयन के पश्चात्, इन नियमों से सलग्न उपाबन्ध-ख के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन और शर्तें.—(क) संविदा पर नियुक्त व्यक्ति को 22,200/— रुपए की नियत संविदात्मक रकम (जो पे बैंड का न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्षों के लिए संविदात्मक रकम में 666/—रुपए (पद के पे-बैंड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात्, एक दिन के आकस्मिक अवकाश का हकदार होगा। तथापि, संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति अवकाश और दस दिन के चिकित्सा अवकाश का हकदार भी होगा/होगी। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा:

परंतु अनुपभुक्त आकस्मिक अवकाश और चिकित्सा अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और अगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा। (घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा। संविदा पर नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

(ङ) संविदा पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला अभ्यर्थी प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

(छ) संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध, जैसे एफ.आर.एस.आर, छुट्टी नियम, साधारण भविष्य निधि नियम, पेन्शन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जन-जातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवाओं में आरक्षण की बाबत जारी किए गए आदेशों के अधीन होगी।

17. विभागीय परीक्षा.—सेवा में प्रत्येक सदस्य को समय-समय पर यथा संशोधित विभागीय परीक्षा नियम, 1997 में यथा विहित विभागीय परीक्षा उत्तीर्ण करनी होगी।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के

परामर्श से, आदेश द्वारा, इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बाबत, शिथिल कर सकेगी ।

उपाबन्ध—ख

वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ) और हिमाचल प्रदेश सरकार के मध्य प्रधान सचिव/सचिव (आयुर्वेद), हिमाचल प्रदेश सरकार के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्रारूप

यह करार श्री/श्रीमतीपुत्र पुत्री श्री निवासी....., संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् “प्रथम पक्षकार” कहा गया है) और हिमाचल प्रदेश की राज्यपाल, के मध्य प्रधान सचिव/सचिव आयुर्वेद, हिमाचल प्रदेश सरकार (जिसे इसमें इसके पश्चात् “द्वितीय पक्षकार” कहा गया है) के माध्यम से आज तारीख.....को किया गया ।

“द्वितीय पक्षकार” ने उपरोक्त “प्रथम पक्षकार” को लगाया है और प्रथम पक्षकार ने वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ) के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:—

1. यह कि प्रथम पक्षकार वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ) के रूप में.....से प्रारम्भ होने और को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस को अर्थात्.... दिन को संवयमेव ही पर्यवसित (समाप्त) हो जाएगी और सूचना नोटिस आवश्यक नहीं होगा :

परन्तु वर्षानुवर्ष आधार पर संविदा की अवधि में विस्तारण/नवीकरण के लिए विभागाध्यक्ष यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा तथा आचरण, वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को विस्तारित/नवीकृत की जाएगी।

2. प्रथम पक्षकार की संविदात्मक रकम 22,200/— रुपए प्रति मास होगी।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है, तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिए दायी होगी/होगा।
4. संविदा पर नियुक्त वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ) एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। तथापि संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति अवकाश और दस दिन के चिकित्सा अवकाश के लिए भी हकदार होगा/होगी। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा:

परन्तु अनुपभुक्त आकस्मिक अवकाश और चिकित्सा अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदात्मक वरिष्ठ आयुर्वेदिक चिकित्सक(विशेषज्ञ) कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

6. संविदा के आधार पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत व्यवसायी, से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था, प्रसव होने तक, उसे अस्थायी तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।
8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी अधिकारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।
9. संविदा पर नियुक्त व्यक्ति(यों) को कर्मचारी सामूहिक बीमा योजना के साथ-साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं।

साक्षी की उपस्थिति में

1.
नाम
पता

प्रथम पक्षकार के हस्ताक्षर

2.
पता
नाम

साक्षी की उपस्थिति में

1.
नाम
पता

द्वितीय पक्षकार के हस्ताक्षर

2.
पता
नाम

[Authoritative English Text of this Department's Notification No. Ayur-A(3)-3/2009 dated 23-03-2013 As required under clause(3) of Article 348 of the Constitution of India].

DEPARTMENT OF AYURVEDA

NOTIFICATION

Shimla-171002, the 23rd March, 2013

No. Ayur-A(3)-9/2010.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with H.P. Public Service

Commission, is pleased to make the Recruitment and Promotion Rules for the post of Senior Ayurvedic Chikitsak(Specialist), Class-I(Gazetted) in the Department of Ayurveda, Himachal Pradesh, as per **Annexure-‘A’** attached to this notification, namely :—

1. Short title & Commencement.—(1) These rules may be called the Himachal Pradesh, Department of Ayurveda, Senior Ayurvedic Chikitsak (Specialist), Class-I (Gazetted), Recruitment & Promotion Rules, 2013.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Repeal & Savings.—(1) The Himachal Pradesh Department of Indian System of Medicine and Homeopathy, Class-II, service(Senior Ayurvedic Chikitsak) Recruitment & Promotion Rules, 1989 notified vide this Department Notification No. Health-A(3)-5/87 Dated 16-02-1989 are hereby repealed.

(2) Notwithstanding such repeal, any appointment made or anything done or any action taken under the relevant rules so repealed under sub rule 2(1) supra shall be deemed to have been validly made, done or taken under these rules.

By order,
Sd/-

Principal Secretary (Ayurveda).

Annexure-A

Recruitment and Promotion Rules for the post of Senior Ayurvedic Chikitsak (Specialist) (Class- I-Gazetted) in the Department of Ayurveda, Himachal Pradesh

1. Name of Post.—Senior Ayurvedic Chikitsak(Specialist)

2. Number of Post(s).—18(Eighteen)

3. Classification.—Class-I (Gazetted)

4. Scale of Pay.—(i) *Pay Scale for regular incumbent(s).*—Rs.15600-39100 + 6600/- Grade Pay.

(ii) *Emoluments for contract employee.*—Rs. 22,200/-Grade pay as per details given in Col.15-A.

5. Whether selection or Non-selection post.—Selection

6. Age for direct Recruitment.—45 years and below

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Govt. including those who have been appointed adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date when he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age limit by virtue of his/her such adhoc or contract appointment;

Provide further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial of such constitutions of such Corporations/Autonomous Bodies shall be allowed age concession will not, however, be admissible to such staff of the Public Sector Corporation/Autonomous Bodies and who are/were Finally absorbed in the service of such Corporations/Autonomous after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

(2) Age and experience in the case of direct recruitment, relaxable at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is otherwise will qualified.

7. Minimum Educational and other qualifications required for direct recruitment(s).—(a) Essential Qualification(s).—(i) M.D. (Ayurveda) of at least 3(three) years duration in Kayachikitsa or Balroga or Prasuti Tantra or Shalaya Tantra or Shalkya Tantra or Panchkarma from an Institution recognized by Central Council of Indian Medicines/ Government of Himachal Pradesh.

(ii) Five year clinical experience in a Government/ recognized Institution(s) as Ayurvedic Medical Officer after doing Post Graduation in the concerned speciality.

(b) Desirable Qualifications.—Knowledge of customs, manner and dialects of H.P. and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification prescribed for direct recruits will apply in the case of the promotees.—Age.—Not applicable.

Educational Qualification.—Yes, As prescribed against Column No.11 below.

9. Period of probation, if any.—Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method of recruitment whether by direct recruitment or by promotion deputation, transfer and the percentage of posts to be filled in by various methods.—1. 50% by promotion ;

2. 50% by direct recruitment on regular basis or by recruitment on contract basis, as the case may be, failing which by transfer/on secondment basis.

11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made.—By promotion from amongst the Ayurvedic Medical Officer having a recognized M.D.(Ayurveda) of atleast three years duration in the speciality of Kayachikitsa or Balroga or Prasuti Tantra or Shalya Tantra or Shalkya Tantra or Panchkarma with atleast five years regular service or regular combined with continuous adhoc

service, if any, in the concerned speciality after acquiring the concerned M.D.(Ayurveda) degree failing which by transfer/on secondment basis from amongst the incumbents holding equivalent posts and working in the identical pay scale from other Departments of State Government.

Provided that for filling up the post of Senior Ayurvedic Chikitsak (Specialist), the following two points post based roster shall be followed:—

Point No.	Category
1st post	Promotee
2nd post	Direct recruit

Note.—The roster will be rotated after every 2nd point till the representation to both categories is achieved by the given percentage. Thereafter, the vacancy is to be filled up from the category which vacates the post.

A(I) Provided that for the purpose of promotion every employee shall have to serve at least one term in the Tribal/Difficult areas subject to adequate number of post(s) available in such areas; Provided further that the proviso A(I) supra shall not be applicable in the case of those employees who have five years or less service, left for superannuation.

Provided further that Officers/Officials who have not served at least one tenure in Tribal/difficult area shall be transferred to such area strictly in accordance with his/her seniority in the respective cadre.

Explanation-I.—For the purpose of proviso A(I) supra the “ term” in Tribal/ difficult areas shall mean normally three years or less period of posting in such areas keeping in view of the administrative requirements and performance of the employee.

Explanation-II.—For the purpose of proviso I supra the Tribal/difficult areas shall be as under:—

1. District Lahaul & Spiti.
2. Pangi and Bharmour Sub-Division of Chamba District.
3. Dodra Kwar area of Rohru Sub-Division.
4. Pandrah Bis Pargana, Munish darkali and Gram Panchyat Kashapat, Gram Panchayat Kashapat, Gram Panchayats of Rampur Tehsil of District Shimla.
5. Pandrah Bis Pargana of Kullu District.
6. Bara Bhangal Area of Baijnath Sub-Division of Kangra District.
7. District Kinnaur.
8. Kathwar and Korga Patwa Circles of Kamrau Sub- Tehsil Bhaladh Bhalona and Sanga Patwar Circles of Renukaji Tehsil and Kota Pab Patwar Circle of Shilai Tehsil of Sirmour District.
9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, Gada Gusaaini, Mathyani, Gharyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub Tehsil, Jharwar, Kutgarh, Graman, Devgar, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar Circle of Pathar Tehsil, Chuni, Kalipar, Mangarh, Thach-Bagra, North Magru and south Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sundernagar Tehsil in Mandi District.

(i) In all cases of promotion, the continuous adhoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion subject to condition that the adhoc appointment/

promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provision of R&P rules.

Provided that in all cases where a junior person becomes eligible for consideration by virtue of his/her total length of service(including the service rendered on adhoc basis, followed by regular service/appointment) in the feeder post in view the provision referred to above, all persons senior to him/her in the respective category/ post/ cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;

Provided that all incumbents to be re-considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the Recruitment and Promotion Rules for the post, whichever is less;

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the persons(s) junior to him/her shall also be deemed to be ineligible for consideration for such promotion;

Explanation.—The last proviso shall not render the junior incumbent(s) ineligible for consideration for promotion if the senior ineligible person(s) happened to be ex-servicemen recruited under the provisions of Rule-3 of Demobilised Armed forces Personnel (Reservation of vacancies in Himachal State Non-Technical Services) Rules, 1972 and having been given the benefit of seniority of Rules-3 of Ex-servicemen (Reservation of vacancies in the Himachal Pradesh Technical Service) Rules, 1985 and having been given the benefit of seniority thereunder;

(ii) Similarly in all cases of confirmation adhoc service rendered on the feeder post, if any, prior to the regular appointment/promotion against such post shall be taken into account towards the length of service, if the adhoc appointment/promotion had been made after proper selection and in accordance with the provision of the R&P Rules.

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered as referred to above shall remain unchanged.

12. If a Departmental Promotion committee exists, what is its composition.—As may be constituted by the Govt. from time to time.

13. Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a Citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test if H.P.Public Service Commission or other recruiting authority as the case may be, so consider necessary or expedient by a written test or practical test, the standard/ syllabus etc. of which will be determined by the commission/ other recruiting authority as the case may be.

15-A. Selection for appointment to the post by direct recruitment on contract basis.—Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(I) Concept.—(a) Under this policy, Senior Ayurvedic Chikitsak(Specialist) in the Department of Ayurveda will be engaged on contract basis initially for one year; which may be extendable on year-to-year basis.

Provided that for extension/ renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed/extended.

(b) Post falls within the purview of H.P.P.S.C.—The Principal Secretary (Ayurveda)/ Secretary (Ayurveda) to the Govt. of H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis, will place the requisition with the concerned recruiting agency i.e. H.P. Public Service Commission.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these R&P Rules.

(II) Contractual Emoluments.—The Senior Ayurvedic Chikitsak (Specialist) appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 22,200/-per month (which shall be equal to minimum of the pay band plus grade pay). An amount of Rs.666/-(3% of the minimum of pay band plus grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) Appointing/Disciplinary Authority.—The Principal Secretary (Ayurveda)/ Secretary (Ayurveda) to the Govt. of H.P. will be appointing and disciplinary authority.

(IV) Selection Process.—Selection for appointment to the post in the case of contract appointment will be made on the basis of viva-voce test or if consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e H.P.Public Service Commission.

(V) Committee for selection of Contractual Appointment.—As may be constituted by the concerned recruiting agency i.e. H.P. Public Service Commission from time to time.

(VI) Agreement.—After selection of a candidate, he/she shall sign an agreement as per **Annexure-B** appended to these Rules.

(VII) Terms and Conditions.—(a) The contract appointee will be paid fixed contractual amount @ Rs. 22,200/- per month (which shall be equal to minimum of the pay band plus grade pay).The contract appointee will be entitled for an increase in contractual amount @ of Rs. 666/-(3% of the minimum of pay band plus grade pay of the post) for further extended years and no other allied benefits such as seniority/ selection scales etc. will be given.

(b) The service of the contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/ conduct of the contract appointee is not found satisfactory.

(c) Contract appointee will be entitled for one day's casual leave after putting one month service. However, the contract employee will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave. He/She shall not be entitled for medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Provided that the un-availed Casual Leave and Medical leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who has completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from Govt./Registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled for TA/DA if required to go on tour in connection with his/ her official duties at the same rate as applicable to regular counterpart official at the minimum of pay scale.

(h) Provisions of service rules like FR,SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this column.

16. Reservation.—The appointment to the service shall be subject to order regarding reservation in the service for Scheduled Castes/Scheduled Tribes/Other Backward Classes/Other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.—Every member of the service shall pass a Departmental Examination as prescribed in the Departmental Examination Rules, 1997 and as amended from time to time.

18. Power to relax.—Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the H.P.Public Service Commission relax any of the provisions of these rules with respect to any class or category of person(s) or post(s).

ANNEXURE-B

FORM OF CONTRACT/AGREEMENT TO BE EXECUTED BETWEEN THE SENIOR AYURVEDIC CHIKITSAK(SPECIALIST) AND THE GOVERNMENT OF HIMACHAL PRADESH THROUGH PRINCIPAL SECRETARY/SECRETARY (AYURVEDA) TO THE GOVERNMENT OF HIMACHAL PRADESH

This agreement is made on this _____ day of _____ in the year _____ between Sh/Smt. _____ son/daughter of Shri _____ R/o _____ contract appointee (here-in-after called the FIRST PARTY), AND the Governor, Himachal Pradesh through Principal Secretary/Secretary (Ayurveda) to the Govt. of Himachal Pradesh (here-in-after the SECOND PARTY). Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and FIRST PARTY has agreed to serve as a Senior Ayurvedic Chikitsak(Specialist) on contract basis on the following terms and conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Senior Ayurvedic Chikitsak(Specialist) for a period of one year commencing on the _____ day of _____ and ending on _____ day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with the SECOND PARTY shall ipso facto stand terminated on the last working day i.e. on _____ and information notice shall not be necessary.

Provided that for further extension/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. The contractual amount of the FIRST PARTY will be Rs. 22,200 per month.
3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.
4. Contractual Senior Ayurvedic Chikitsak(Specialist)will be entitled for one day casual leave after putting one month service. However, the contract employee will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave. He/She shall not be entitled for medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Provided that the un-availed Casual Leave and Medical leave can be accumulated upto the calendar year and will not be carried forward for the next calendar year.

5. Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. A contractual Senior Ayurvedic Chikitsak(Specialist) will not be entitled for contractual amount for the period of absence from duty.
6. An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
7. Selected candidate will have to submit a certificate of his/her fitness from Govt./Registered Medical Practitioner. In case of women candidates pregnant beyond 12 weeks will render her temporarily unfit till the confinement is over. The woman candidate should be re-examined for fitness from Govt./authorized Medical Officer/Practitioner.
8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rates as applicable to regular counterpart officer at the minimum of the pay scale.
9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY and SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____
 Name _____
 Address _____

(Signature of the FIRST PARTY)

2. _____
 Name _____
 Address _____

IN THE PRESENCE OF WITNESS.

1. _____
 Name _____
 Address _____

(Signature of the SECOND PARTY)

2. _____
 Name _____
 Address _____

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION**Shimla-2 , the 19th March, 2013

No. Sharm (A) 7-1/2005 (Award)-part-file.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	45/2012	Shri Gurmukh Singh V/s Deepak Spinners Ltd. Baddi.	14-2-2013
2.	49/2010	Sh. Hari Krishan V/S Hotel Himachal Shimla.	21-2-2013
3.	51//2010	Sh. Ramesh Kumar & others V/s -do-	21-2-2013
4.	20/2010	Sh. Dalip Singh V/s Planet Indrasuctures Ltd. Solan.	27-2-2013
5.	47/2010	Sh. Karan Thakur V/S -do-	27-2-2013
6.	07/2010	Sh. Ganga Ram V/S -do-	27-2-2013
7.	102/2010	Sh. Sita Ram V/s DFO renkua & others	28-2-2013
8.	10/2010	Sh. Narinder Singh V/s Collector Forest Settlement Nahan.	28-2-2013
9.	9/2010	Sh. Satveer Singh V/s -do-	28-2-2013

BY order

Sd/-

Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 20 of 2010
Instituted on. 12.4.2010.
Decided on 27.2.2013.

Dalip Singh S/o Shri Hikmat Singh C/o Shyam General Store, Deonghat, Solan, Opp. Solan (HP) through J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, H.P.

..Petitioner.

Vs.

M/s Planet Infrastructure Pvt., Ltd., Planet Tower Baba Balak Nath Bhawan, Opp. New Bus Stand, By Pass Solan, District Solan, H.P. through its Managing Director.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C Bhardwaj, AR.

For respondent : Exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether retrenchment of Shri Dalip Singh S/o Shri Hikmat Singh employee of M/s Planet Infrastructure Pvt. Ltd., Plant Tower Baba Balak Nath Bhawan, Opposite New Bus Stand, Bye- Pass Solan, Tehsil & District Solan, H.P from the post of Driver w.e.f. 21.1.2009 is in accordance with provisions of the Industrial Disputes Act, 1947? If not, what relief the workman of above firm is entitled to?”

2. The petitioner filed the claim petition stating that he was employed as Tipper Driver in the respondent company in the month of December, 2007. However, his services were orally and illegally terminated without any notice by the respondent on 20.1.2009. At that time no compensation in lieu of notice was paid to the petitioner. After the termination of petitioner, the respondent employed new workmen. As such, the termination of petitioner was against the provisions of Industrial Disputes Act, 1947. Hence, the claim petition was filed with the prayer to set aside the termination order. Petitioner further prayed for full back wages, seniority and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability and cause of action were taken. On merits, respondent stated that the petitioner was appointed as Tipper Driver in May, 2008 and he was never terminated. In fact, petitioner left the job on his own and joined another company namely Rewal Variety Construction Ltd., Rajgarh Road, Oachghat, District Solan w.e.f. 4.12.2008. So, there was no occasion for the respondent to retrench the petitioner. The petitioner never remained in active roll of the respondent and he himself left the job on 4.12.2008. The respondent also denied that thereafter new workmen were employed. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of Shri Dalip Singh by the Managing Director M/s Planet Infrastructure Pvt. Ltd. Solan w.e.f. 21.1.2009 is in violation of the provisions of Industrial Disputes Act? ..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Thereafter, the case was listed for the evidence of petitioner.

7. After recording the evidence of petitioner, the case was fixed for the evidence of respondent. The respondent availed six opportunities to lead evidence and finally on 10.1.2013 none appeared on behalf of respondent, hence, respondent was proceeded against exparte.

8. I have heard exparte arguments of petitioner and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for re-instatement with seniority and continuity but without back wages.
Relief.	Reference answered in negative per operative part of award.

Reasons for finding.

Issue No. 1.

10. In view of arguments advanced on behalf of petitioner as well as evidence on record, I am of the considered opinion that the termination of services of petitioner by the respondent w.e.f. 21.1.2009 is in violation of the provisions of Industrial Disputes Act, 1947.

11. The petitioner has alleged that he worked from December, 2007 to 20.1.2009 when he was illegally terminated without any notice as required under section 25-F of Industrial Disputes Act, 1947. For the same, petitioner was to establish that prior to 21.1.2009, he worked for 240 days in a calendar year. If the petitioner could prove this fact only then the respondent was under the legal obligation to serve a notice of one month's to the petitioner or to pay him compensation in lieu of such notice.

12. The petitioner as PW-1 has made a general statement in his affidavit Ex. PA that he worked for 240 days in a calendar year prior to his termination and he was not served notice under section 25-F of Industrial Disputes Act, by the respondent. But his testimony was questioned by the respondent during his cross-examination, so, the general statement of petitioner is not sufficient to prove that in fact he worked for 240 days in the preceding calendar year when he was terminated from service w.e.f. 21.1.2009.

13. The petitioner also produced in evidence Ex. PA copy of log book of the vehicle which he used to ply in order to show that he worked under the respondent. Although, Ex. PA is a photocopy and its original was not shown to the Court. Since this document was produced by the

petitioner, therefore, it can be looked into against the petitioner. If the contents of Ex. PA are admitted to be true then it is revealing that as Driver of the vehicle, the petitioner remained on duty for 116 days from 1.1.2008 to 19.1.2009. So, the documentary evidence produced by the petitioner is also not proving his plea that he worked for 240 days prior to his termination w.e.f. 21.1.2009. As the result, there is no violation of section 25-F of Industrial Disputes Act, 1947.

14. At the same time, the petitioner has also taken the plea that after his termination, the respondent employed new workmen and violated the provisions of section 25-H of Industrial Disputes Act, 1947. He has categorically deposed this fact in his testimony. The cross-examination of petitioner is revealing that this fact is not disputed by the respondent as no cross-examination was conducted on this fact. That means the testimony of petitioner goes un-rebutted that after his termination respondent employed new workmen.

15. The respondent has taken the plea that petitioner has left the job on his own on 4.12.2008 and joined another company. But on behalf of respondent no evidence was led in any manner whatsoever to prove said plea. Consequently, in the absence of any evidence on behalf of respondent, it cannot be held that the petitioner left the job on his own and joined another company on 4.12.2008. Therefore, we have to believe the testimony of petitioner that he was terminated w.e.f 21.1.2009 and after his termination respondent employed junior workmen. Section 25-H of Industrial Disputes Act, reads as follows:

“Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2*[to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.”

16. In the light of aforesaid provision of law it was obligatory upon the respondent to give the opportunity to the petitioner for reemployment in preference to other (fresh) workmen. Since, there is violation of provisions of section 25-H of the Industrial Disputes Act, 1947, therefore, the termination of petitioner is not sustainable under law and liable to set aside. As far as the working of 240 days in a calendar year is concerned, this provision is only relevant for the purpose of section 25-F of Industrial Disputes Act, 1947 and it is not necessary to a workman to complete 240 days during the preceding calendar year to take the benefit of section 25-H of Industrial Disputes Act, 1947. Here, I am supported by the law laid down by Hon'ble High Court of H.P in the matter of State of H.P and other Vs. Bhatag Ram and another reported in latest HLJ 2007 (H.P) 903.

17. Accordingly, for the aforesaid reasons, this issue is decided in favour of petitioner.
Issue No. 2.

18. For the reason recorded hereinabove while deciding issue No.1, the termination of services of petitioner w.e.f. 21.1.2009 by the respondent is hereby set aside and as such the petitioner is entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 21.1.2009 by the respondent is set aside and the petitioner

is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 7 of 2010
Instituted on. 12.4.2010.
Decided on 27.2.2013.

Ganga Ram S/o Shri Kalu Ram C/o Shyam General Store, Deonghat, Solan, Opp. Solan (HP) through J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, H.P.

..Petitioner.

Vs.

M/s Planet Infrastructure Pvt., Ltd., Planet Tower Baba Balak Nath Bhawan, Opp. New Bus Stand, By Pass Solan, District Solan, H.P. through its Managing Director.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C Bhardwaj, AR.

For respondent : Exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of services of Shri Ganga Ram Driver by the Managing Director M/s Planet Infrastructure Pvt. Ltd., Plant Tower Baba Balak Nath Bhawan, Opposite New Bus Stand, Bye- Pass Solan, Tehsil & District Solan, H.P from the post of Driver w.e.f. 20.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitled to”.

2. The petitioner filed the claim petition stating that he was employed as Tipper Driver in the respondent company in the month of October, 2007. However, his services were orally and illegally terminated without any notice by the respondent on 20.1.2009. At that time no compensation in lieu of notice was paid to the petitioner. After the termination of petitioner, the respondent employed new workmen. As such, the termination of petitioner was against the provisions of Industrial Disputes Act, 1947. Hence, the claim petition was filed with the prayer to set aside the termination order. Petitioner further prayed for full back wages, seniority and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability and cause of action were taken. On merits, respondent stated that the petitioner was appointed as Tipper Driver in May, 2008 and he was never terminated. In fact, petitioner left the job on his own and joined another company namely Rewal Variety Construction Ltd., Rajgarh Road, Oachghat, District Solan w.e.f. 4.12.2008. So, there was no occasion for the respondent to retrench the petitioner. The petitioner never remained in active roll of the respondent and he himself left the job on 4.12.2008. The respondent also denied that thereafter new workmen were employed. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of Shri Ganga Ram by the Managing Director M/s Planet Infrastructure Pvt. Ltd. Solan w.e.f. 20.1.2009 is in violation of the provisions of Industrial Disputes Act? ..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Thereafter, the case was listed for the evidence of petitioner.

7. After recording the evidence of petitioner, the case was fixed for the evidence of respondent. The respondent availed six opportunities to lead evidence and finally on 10.1.2013 none appeared on behalf of respondent, hence, respondent was proceeded against exparte.

8. I have heard exparte arguments of petitioner and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for re-instatement with seniority and continuity but without back wages.

Relief. Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1.

10. In view of arguments advanced on behalf of petitioner as well as evidence on record, I am of the considered opinion that the termination of services of petitioner by the respondent w.e.f. 20.1.2009 is in violation of the provisions of Industrial Disputes Act, 1947.

11. The petitioner has alleged that he worked from October, 2007 to 20.1.2009 when he was illegally terminated without any notice as required under section 25-F of Industrial Disputes Act, 1947. For the same, petitioner was to establish that prior to 20.1.2009, he worked for 240 days in a calendar year. If the petitioner could prove this fact only then the respondent was under the

legal obligation to serve a notice of one month's to the petitioner or to pay him compensation in lieu of such notice.

12. The petitioner as PW-1 has made a general statement in his affidavit Ex. PA that he worked for 240 days in a calendar year prior to his termination and he was not served notice under section 25-F of Industrial Disputes Act, by the respondent. But his testimony was questioned by the respondent during his cross-examination, so, the general statement of petitioner is not sufficient to prove that in fact he worked for 240 days in the preceding calendar year when he was terminated from service w.e.f. 20.1.2009.

13. The petitioner also produced in evidence mark X copy of log book of the vehicle which he used to ply in order to show that he worked under the respondent. Although, mark X is a photocopy and its original was not shown to the Court. Since this document was produced by the petitioner, therefore, it can be looked into against the petitioner. If the contents of mark X are admitted to be true then it is revealing that as Driver of the vehicle, the petitioner remained on duty for 110 days from 1.1.2008 to 19.1.2009. So, the documentary evidence produced by the petitioner is also not proving his plea that he worked for 240 days prior to his termination w.e.f. 20.1.2009. As the result, there is no violation of section 25-F of Industrial Disputes Act, 1947.

14. At the same time, the petitioner has also taken the plea that after his termination, the respondent employed new workmen and violated the provisions of section 25-H of Industrial Disputes Act, 1947. He has categorically deposed this fact in his testimony. The cross-examination of petitioner is revealing that this fact is not disputed by the respondent as no cross-examination was conducted on this fact. That means the testimony of petitioner goes un-rebutted that after his termination respondent employed new workmen.

15. The respondent has taken the plea that petitioner has left the job on his own on 4.12.2008 and joined another company. But on behalf of respondent no evidence was led in any manner whatsoever to prove said plea. Consequently, in the absence of any evidence on behalf of respondent, it cannot be held that the petitioner left the job on his own and joined another company on 4.12.2008. Therefore, we have to believe the testimony of petitioner that he was terminated w.e.f 20.1.2009 and after his termination respondent employed junior workmen. Section 25-H of Industrial Disputes Act, reads as follows:

“Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2*[to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.”

16. In the light of aforesaid provision of law it was obligatory upon the respondent to give the opportunity to the petitioner for reemployment in preference to other (fresh) workmen. Since, there is violation of provisions of section 25-H of the Industrial Disputes Act, 1947, therefore, the termination of petitioner is not sustainable under law and liable to set aside. As far as the working of 240 days in a calendar year is concerned, this provision is only relevant for the purpose of section 25-F of Industrial Disputes Act, 1947 and it is not necessary to a workman to complete 240 days during the preceding calendar year to take the benefit of section 25-H of Industrial Disputes Act, 1947. Here, I am supported by the law laid down by Hon'ble High Court of H.P in the matter of State of H.P and other Vs. Bhatag Ram and another reported in latest HLJ 2007 (H.P) 903.

17. Accordingly, for the aforesaid reasons, this issue is decided in favour of petitioner.

Issue No. 2

18. For the reason recorded hereinabove while deciding issue No.1, the termination of services of petitioner w.e.f. 20.1.2009 by the respondent is hereby set aside and as such the petitioner is entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 20.1.2009 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 47 of 2010
Instituted on. 22.4.2010.
Decided on 27.2.2013.

Karan Thakur S/o Shri Lal Singh C/o Shyam General Store, Deonghat, Solan, Opp. Solan (HP) through J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, H.P.

..Petitioner.

Vs.

M/s Planet Infrastructure Pvt., Ltd., Planet Tower Baba Balak Nath Bhawan, Opp. New Bus Stand, By Pass Solan, District Solan, H.P. through its Managing Director

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C Bhardwaj, AR.

For respondent : Exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of services of Shri Karan Thakur S/o Shri Lal Singh Driver by the Managing Director M/s Planet Infrastructure Pvt. Ltd., Plant Tower Baba Balak Nath

Bhawan, Opposite New Bus Stand, Bye- Pass Solan, Tehsil & District Solan, H.P from the post of Driver w.e.f. 20.1.2009 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitled to.”

2. The petitioner filed the claim petition stating that he was employed as Tipper Driver in the respondent company in the month of December, 2007. However, his services were orally and illegally terminated without any notice by the respondent on 20.1.2009. At that time no compensation in lieu of notice was paid to the petitioner. After the termination of petitioner, the respondent employed new workmen. As such, the termination of petitioner was against the provisions of Industrial Disputes Act, 1947. Hence, the claim petition was filed with the prayer to set aside the termination order. Petitioner further prayed for full back wages, seniority and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability and cause of action were taken. On merits, respondent stated that the petitioner was appointed as Tipper Driver in May, 2008 and he was never terminated. In fact, petitioner left the job on his own and joined another company namely Rewal Variety Construction Ltd., Rajgarh Road, Oachghat, District Solan w.e.f. 4.12.2008. So, there was no occasion for the respondent to retrench the petitioner. The petitioner never remained in active roll of the respondent and he himself left the job on 4.12.2008. The respondent also denied that thereafter new workmen were employed. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of Shri Karan Thakur by the Managing Director M/s Planet Infrastructure Pvt. Ltd. Solan w.e.f. 20.1.2009 is in violation of the provisions of Industrial Disputes Act?

..OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

..OPP.

3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Thereafter, the case was listed for the evidence of petitioner.

7. After recording the evidence of petitioner, the case was fixed for the evidence of respondent. The respondent availed six opportunities to lead evidence and finally on 10.1.2013 none appeared on behalf of respondent, hence, respondent was proceeded against exparte.

8. I have heard exparte arguments of petitioner and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for re-instatement with seniority and continuity but without back wages.

Relief.

Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1.

10. In view of arguments advanced on behalf of petitioner as well as evidence on record, I am of the considered opinion that the termination of services of petitioner by the respondent w.e.f. 20.1.2009 is in violation of the provisions of Industrial Disputes Act, 1947.

11. The petitioner has alleged that he worked from December, 2007 to 20.1.2009 when he was illegally terminated without any notice as required under section 25-F of Industrial Disputes Act, 1947. For the same, petitioner was to establish that prior to 20.1.2009, he worked for 240 days in a calendar year. If the petitioner could prove this fact only then the respondent was under the legal obligation to serve a notice of one month's to the petitioner or to pay him compensation in lieu of such notice.

12. The petitioner as PW-1 has made a general statement in his affidavit that he worked for 240 days in a calendar year prior to his termination and he was not served notice under section 25-F of Industrial Disputes Act, by the respondent. But his testimony was questioned by the respondent during his cross-examination, so, the general statement of petitioner is not sufficient to prove that in fact he worked for 240 days in the preceding calendar year when he was terminated from service w.e.f. 20.1.2009.

13. The petitioner also produced in evidence Ex. PA copy of log book of the vehicle which he used to ply in order to show that he worked under the respondent. Although, Ex. PA is a photocopy and its original was not shown to the Court. Since this document was produced by the petitioner, therefore, it can be looked into against the petitioner. If the contents of Ex. PA are admitted to be true then it is revealing that as Driver of the vehicle, the petitioner remained on duty for 123 days from 1.1.2008 to 19.1.2009. So, the documentary evidence produced by the petitioner is also not proving his plea that he worked for 240 days prior to his termination w.e.f. 20.1.2009. As the result, there is no violation of section 25-F of Industrial Disputes Act, 1947.

14. At the same time, the petitioner has also taken the plea that after his termination, the respondent employed new workmen and violated the provisions of section 25-H of Industrial Disputes Act, 1947. He has categorically deposed this fact in his testimony. The cross-examination of petitioner is revealing that this fact is not disputed by the respondent as no cross-examination was conducted on this fact. That means the testimony of petitioner goes un-rebutted that after his termination respondent employed new workmen.

15. The respondent has taken the plea that petitioner has left the job on his own on 4.12.2008 and joined another company. But on behalf of respondent no evidence was led in any manner whatsoever to prove said plea. Consequently, in the absence of any evidence on behalf of respondent, it cannot be held that the petitioner left the job on his own and joined another company on 4.12.2008. Therefore, we have to believe the testimony of petitioner that he was terminated w.e.f 20.1.2009 and after his termination respondent employed junior workmen. Section 25-H of Industrial Disputes Act, reads as follows:

“Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2*[to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.”

16. In the light of aforesaid provision of law it was obligatory upon the respondent to give the opportunity to the petitioner for reemployment in preference to other (fresh) workmen. Since, there is violation of provisions of section 25-H of the Industrial Disputes Act, 1947, therefore, the termination of petitioner is not sustainable under law and liable to set aside. As far as the working of 240 days in a calendar year is concerned, this provision is only relevant for the purpose of section 25-F of Industrial Disputes Act, 1947 and it is not necessary to a workman to complete 240 days during the preceding calendar year to take the benefit of section 25-H of Industrial Disputes Act, 1947. Here, I am supported by the law laid down by Hon'ble High Court of H.P in the matter of State of H.P and other Vs. Bhatag Ram and another reported in latest HLJ 2007 (H.P) 903.

17. Accordingly, for the aforesaid reasons, this issue is decided in favour of petitioner.
Issue No. 2.

18. For the reason recorded hereinabove while deciding issue no.1, the termination of services of petitioner w.e.f. 20.1.2009 by the respondent is hereby set aside and as such the petitioner is entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 20.1.2009 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 10 of 2010
Instituted on. 12.4.2010.
Decided on 28.2.2013.

Narender Singh S/o Shri Bhagat Ram R/o Village Sarahan, P.O Banethi, Tehsil Nahan,
District Sirmour, H.P.

..Petitioner.

Vs.

1. The Collector of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P.

2. The Assistant Conservator of Forest, Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of the services of Shri Narender Singh S/o Shri Bhagat Ram by i) The Collector, Forest Settlement Solan and Sirmour at Nahan District Sirmour, H.P. ii) The Assistant Conservator of Forest Settlement Solan & Sirmour at Nahan District Sirmour, H.P w.e.f. 13.10.2008 where as his juniors have been kept in service is legal and justified? If not, what relief of service benefits the above workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged by the respondent in Forest Beat Banethi under Jamta Forest Range in November, 1999 and petitioner worked till 30.6.2008. The services of petitioner were wrongly and illegally terminated orally by the respondent in July, 2008. However, the date of termination of petitioner has been wrongly shown in reference as 13.10.2008. No notice was served upon the petitioner before his termination and further the respondent did not follow the principle of last come first go as junior workmen to the petitioner were still working with the respondent, hence, the termination of petitioner was illegal. Consequently, petitioner filed the claim petition challenging his termination and he further prayed that he be reinstated in service with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. The respondent also stated that the petitioner was engaged in seasonal forestry work on daily wages and in fact the petitioner did not complete 240 days in a calendar year prior to his termination. At the end of every season, the services of petitioner were not required, so, there was no termination or retrenchment of the petitioner. All the labourers were engaged in accordance with seniority.

On merits, the respondent stated that the petitioner was engaged on 6.3.2000. The services of petitioner were never terminated but he was still working with the respondent department. In fact, the petitioner remained absent from work and whenever he reported to the work, he was engaged. The engagement and disengagement of the workers was done as per the principle of last come first go. No juniors to the petitioner were retained. Consequently, respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of the petitioner by the respondents with effect from 13.10.2008 is in violation of the provisions of Industrial Disputes Act, 1947 ?

..OPP.

2. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to?

..OPP.

3. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for seniority and continuity but without back wages.

Relief. Reference answered in negative per operative part of award.

Reasons for finding

Issue No.1.

8. From the pleadings as well as evidence of both the parties, it is undisputed that the petitioner worked with the respondent as daily wager and he was earlier disengaged by the respondent in 2008. It is also undisputed fact that now the respondents has engaged the petitioner on 17.8.2009.

9. The petitioner Narender Singh stepped into the witness box as PW-1 and he has categorically deposed all the facts stated by him in his claim petition. He has stated that he was terminated w.e.f 1.7.2008 without following any procedure and he was reengaged w.e.f. 17.8.2009. When he was disengaged, he raised demand notice Ex. PW-1/B.

10. On behalf of respondents RW-1 Shri Sunil kumar Dy. Ranger was examined. His testimony is revealing that the petitioner has been working with the department since 6.3.2000. However, in the crossexamination of petitioner, respondent has admitted that petitioner was reengaged on 17.8.2009. The witness of respondent also tendered in evidence the mandays chart of the petitioner Ex. RW-1/A. This mandays chart is specific evidence to reveal that the petitioner was terminated on 1.7.2008 and prior to his termination he worked for more than 240 days in a calendar year.

11. Since, petitioner worked for more than 240 days in a calendar year prior to his termination w.e.f. 1.7.2008, therefore, the respondent was under the legal obligation as per provisions of section 25-F of Industrial Disputes Act, 1947 to serve one month's notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of said notice. But no such steps were taken by the respondent before terminating the petitioner. Here, the cross-examination of RW-1 Sunil Kumar is relevant wherein he has admitted that department had not served any notice or paid any compensation to the petitioner on 1.7.2008 when his services were terminated. Consequently, the termination of petitioner is illegal and liable to set aside.

12. The petitioner has also alleged that the respondent violated the principle of first come last go. In his testimony he has categorically deposed that junior workers to him were retained by the respondent after terminating him in 2008. RW-1 Sunil Kumar in his crossexamination, has admitted that the junior workers to petitioner were still in service. Here section 25-G of Industrial Disputes Act, 1947 is relevant which says that whenever any workman is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed. Therefore, if any retrenchment was made in July, 2008, the respondent could have retrenched the junior workman to the petitioner who was retained by the respondents. Therefore, there is clear

violation of section 25-G of Industrial Disputes Act, 1947. On this score also the termination of petitioner w.e.f. 1st July, 2008 is not sustainable.

13. Although, in the reference the date of termination of petitioner has been stated to be from 13.10.2008. However, for the reasons discussed hereinabove, it stands established the petitioner was terminated w.e.f. 1.7.2008. So, the termination of petitioner w.e.f. 1.7.2008 is hereby declared illegal and is accordingly set aside.

14. Consequently, for the aforesaid reasons, this issue is decided in favour of petitioner.
Issue No. 2

15. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 1.7.2008 by the respondents is hereby set aside. As discussed hereinabove, it stands established that the respondent has re-employed the petitioner from 17.8.2009 and now the petitioner is working with the respondent. However, the period w.e.f. 1.7.2008 to 16.8.2009 cannot be treated as break in service and the petitioner would be deemed to in service during this period as such the petitioner is entitled for seniority and continuity in service. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 1.7.2008 by the respondents is set aside. Since, the petitioner has been re-engaged, therefore, he is entitled to the seniority and continuity w.e.f. 1.7.2008 to 16.8.2009. This period shall be counted for the purpose of seniority and continuity of the petitioner and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref No. 45 of 2012
Instituted on. 28.6.2012.
Decided on 14.02.2013.

Gurmukh Suingh S/o Shri Jagat Singh R/o Village Haripur Sandholi, Baddi District Solan
H.P. *Petitioner.*

Vs.

The Managing Director M/s Deepak Spinners Ltd., Industrial Area Baddi, District Solan,
H.P. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether termination of services of Shri Gurmukh Singh S/o Shri Jagat Singh R/o Village Haripur Sandholi, Baddi District Solan HP as Senior Fitter by the Managing Director M/s Deepak Spinners Ltd., Industrial Area Baddi, District Solan, H.P w.e.f. 8.7.2010 after conducting an exparte enquiry is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The reference was received in respect of termination of services of Gurmukh Singh petitioner. Petitioner appeared before this Court and prayed for adjournment to file the claim petitioner which was allowed. Thereafter, neither petitioner nor any person on his behalf appeared and failed to file any claim despite sufficient opportunities which goes to show that the petitioner is not interested to pursue this reference. Accordingly, the reference is answered in negative and as such the petitioner is not entitled to any relief from this Court. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
14/2/2013.

*Presiding Judge,
Labour Court Shimla.
Camp at Nalagarh.*

Ref.49/2010

Sh. Hari krishan V/s Proprieter, M/s Hotel Himachal Shimla.

21.2.2013.

Present: Petitioner with Shri Niranjana Verma, Advocate for petitioner.
Shri Rahul Mahajan, Advocate for respondent.

Today, petitioner stated that the matter has been amicably compromised, so, he did not want to press the present reference. To this effect, statement of petitioner recorded. He also tendered in evidence memorandum of settlement which is exhibited by this Court as Ex. C-1 which is signed by both the parties. In view of this statement of petitioner, the present reference stands decided and award is also passed accordingly. The memorandum of settlement Ex. C-1 shall form part of the award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:
21/2/2013.

*Presiding Judge,
Labour Court, Shimla.*

Sh. Ramesh Kumar & others V/s Proprieter, M/s Hotel Himachal Shimla

21.2.2013.

Present: Petitioner with Shri Niranjana Verma, Advocate for petitioner.
Shri Rahul Mahajan, Advocate for respondent.

Today, petitioner stated that the matter has been amicably compromised, so, he did not want to press the present reference. To this effect, statement of petitioner recorded. He also tendered in evidence memorandum of settlement which is exhibited by this Court as Ex. C-1 which is signed by both the parties. In view of this statement of petitioner, the present reference stands decided and award is also passed accordingly. The memorandum of settlement Ex. C-1 shall form part of the award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

21/2/2013.

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 9 of 2010
Instituted on. 12.4.2010.
Decided on 28.2.2013.

Satveer Singh S/o Shri Himat Singh R/o Village Sarahan, P.O Banethi, Tehsil Nahan,
District Sirmour, H.P. . . *Petitioner.*

Vs.

3. The Collector of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P.
4. The Assistant Conservator of Forest, Forest Settlement Solan and Sirmour at Nahan,
District Sirmour, H.P. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.
For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of the services of Shri Narendra Singh S/o Shri Bhagat Ram by i) The Collector, Forest Settlement Solan and Sirmour at Nahan District Sirmour, H.P. ii) The Assistant Conservator of Forest Settlement Solan & Sirmour at Nahan District Sirmour, H.P

w.e.f. 13.10.2008 where as his juniors have been kept in service is legal and justified? If not, what relief of service benefits the above workman is entitled to?"

2. The petitioner filed the claim petition stating that he was engaged by the respondent in Forest Beat Banethi under Jamta Forest Range in November, 1999 and petitioner worked till 30.6.2008. The services of petitioner were wrongly and illegally terminated orally by the respondent in July, 2008. However, the date of termination of petitioner has been wrongly shown in reference as 13.10.2008. No notice was served upon the petitioner before his termination and further the respondent did not follow the principle of last come first go as junior workmen to the petitioner were still working with the respondent, hence, the termination of petitioner was illegal. Consequently, petitioner filed the claim petition challenging his termination and he further prayed that he be reinstated in service with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. The respondent also stated that the petitioner was engaged in seasonal forestry work on daily wages and in fact the petitioner did not complete 240 days in a calendar year prior to his termination. At the end of every season, the services of petitioner were not required, so, there was no termination or retrenchment of the petitioner. All the labourers were engaged in accordance with seniority.

On merits, the respondent stated that the petitioner was engaged on 6.3.2000. The services of petitioner were never terminated but he was still working with the respondent department. In fact, the petitioner remained absent from work and whenever he reported to the work, he was engaged. The engagement and disengagement of the workers was done as per the principle of last come first go. No juniors to the petitioner were retained. Consequently, respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of the petitioner by the respondents with effect from 13.10.2008 is in violation of the provisions of Industrial Disputes Act, 1947 ?

..OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

..OPP.

3. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for seniority and continuity but without back wages.

Relief. Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1.

8. From the pleadings as well as evidence of both the parties, it is undisputed that the petitioner worked with the respondent as daily wager and he was earlier disengaged by the respondent in 2008. It is also undisputed fact that now the respondents has engaged the petitioner on 17.8.2009.

9. The petitioner Narender Singh stepped into the witness box as PW-1 and he has categorically deposed all the facts stated by him in his claim petition. He has stated that he was terminated w.e.f 1.7.2008 without following any procedure and he was reengaged w.e.f. 17.8.2009. When he was disengaged, he raised demand notice Ex. PW-1/B.

10. On behalf of respondents RW-1 Shri Sunil kumar Dy. Ranger was examined. His testimony is revealing that the petitioner has been working with the department since 6.3.2000. However, in the crossexamination of petitioner, respondent has admitted that petitioner was reengaged on 17.8.2009. The witness of respondent also tendered in evidence the mandays chart of the petitioner Ex. RW-1/A. This mandays chart is specific evidence to reveal that the petitioner was terminated on 1.7.2008 and prior to his termination he worked for more than 240 days in a calendar year.

11. Since, petitioner worked for more than 240 days in a calendar year prior to his termination w.e.f. 1.7.2008, therefore, the respondent was under the legal obligation as per provisions of section 25-F of Industrial Disputes Act, 1947 to serve one month's notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of said notice. But no such steps were taken by the respondent before terminating the petitioner. Here, the cross-examination of RW-1 Sunil Kumar is relevant wherein he has admitted that department had not served any notice or paid any compensation to the petitioner on 1.7.2008 when his services were terminated. Consequently, the termination of petitioner is illegal and liable to set aside.

12. The petitioner has also alleged that the respondent violated the principle of first come last go. In his testimony he has categorically deposed that junior workers to him were retained by the respondent after terminating him in 2008. RW-1 Sunil Kumar in his crossexamination, has admitted that the junior workers to petitioner were still in service. Here section 25-G of Industrial Disputes Act, 1947 is relevant which says that whenever any workman is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed. Therefore, if any retrenchment was made in July, 2008, the respondent could have retrenched the junior workman to the petitioner who was retained by the respondents. Therefore, there is clear violation of section 25-G of Industrial Disputes Act, 1947. On this score also the termination of petitioner w.e.f. 1st July, 2008 is not sustainable.

13. Although, in the reference the date of termination of petitioner has been stated to be from 13.10.2008. However, for the reasons discussed hereinabove, it stands established the petitioner was terminated w.e.f. 1.7.2008. So, the termination of petitioner w.e.f. 1.7.2008 is hereby declared illegal and is accordingly set aside.

14. Consequently, for the aforesaid reasons, this issue is decided in favour of petitioner.
Issue No. 2.

15. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 1.7.2008 by the respondents is hereby set aside. As discussed

hereinabove, it stands established that the respondent has re-employed the petitioner from 17.8.2009 and now the petitioner is working with the respondent. However, the period w.e.f. 1.7.2008 to 16.8.2009 cannot be treated as break in service and the petitioner would be deemed to in service during this period as such the petitioner is entitled for seniority and continuity in service. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 1.7.2008 by the respondents is set aside. Since, the petitioner has been re-engaged, therefore, he is entitled to the seniority and continuity w.e.f. 1.7.2008 to 16.8.2009. This period shall be counted for the purpose of seniority and continuity of the petitioner and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 102 of 2010
Instituted on. 23.8.2010.
Decided on 28.2.2013.

Sita Ram S/o Shru Junia Ram R/o Village Board, P.O Koti Bounch, Tehsil Shillai, District
Sirmour, H.P. .. Petitioner.

Vs.

1. The Princiipal Chief Conservator of Forest, Himachal Pradesh, Shimla H.P.
 2. Divisional Forest Officer. Forest Division Renukaji, Tehsil Renuka, District Sirmour, H.P.
 3. Range Officer, Forest Range, Shillai, Tehsil Shillai, District Sirmour, H.P.
- ..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.R. Rahi, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of the services of Shri Sita Ram S/o Shri Jhunia Ram by the Divisional Forest Officer, Forest Division, Renukaji, District Sirmour, H.P w.e.f. 1.4.2009 without complying the provisions of the section 25-F of the Industrial Disputes Act, 1947 and giving fictional breaks is legal and justified? If not, what relief of service benefits and compensation the above workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged by the respondent on 1.7.1999 in Forest Beat Khalando under Shillai Forest Range, District Sirmour, H.P. The petitioner worked continuously without any break for more than 240 days in each calendar year. However, his services were terminated earlier on 1.8.2000. The petitioner filed an OA before State Administrative Tribunal, Shimla wherein interim order was passed in favour of petitioner directing the respondent to re-engage him. However, vide order dated 11.1.2006, the State Administrative Tribunal dismissed the O.A of petitioner for want of jurisdiction. The petitioner was subsequently reengaged by the respondent and again retrenched w.e.f. 1.4.2009 without complying the provisions of Industrial Disputes Act, 1947. The petitioner worked for more than 240 days in a calendar year prior to his termination. The petitioner further stated that after his termination, respondent retained junior persons namely Sita Ram, Bir Singh, Hari Singh and Mangat Ram. So, the respondent did not followed the principle of first come last go. Consequently, petitioner challenged his termination w.e.f. 1.4.2009 and prayed that he be reinstated with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein it was stated that the petitioner was only engaged for seasonal forestry work and he was a casual workman. The petitioner never completed 240 days in a calendar year prior to his termination. It was only in 2005 when he completed 242 days. Respondents did not dispute the O.A filed by the petitioner before State Administrative Tribunal, Shimla. Respondent stated that the policy of first come last go was never violated and no juniors to the petitioner were retained after the termination of petitioner. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the respondent with effect from 1.4.2009 is in violation of the provisions of Industrial Disputes Act, 1947 ?
..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?
..OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for re-instatement with seniority and continuity but without back wages.
Relief.	Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner w.e.f. 1.4.2009 is against the provisions of Industrial Disputes Act, 1947 and liable to set aside.

10. From the pleadings as well as evidence of the parties there is no dispute that petitioner was dismissed earlier in 2000. For the same, he had filed OA No. 3353/2000 before the then State Administrative Tribunal, Shimla and vide order dated 1.6.2001 Ex. PX, the Tribunal had ordered the respondent to reengage the petitioner. However, the OA of petitioner was finally dismissed for want of jurisdiction by Administrative Tribunal vide copy of order Ex. PY dated 11.1.2006. It is also undisputed that subsequently the petitioner was reengaged and again terminated w.e.f. 1.4.2009.

11. The petitioner has stepped into the witness box as PW-1 and he has stated that prior to his termination he worked for more than 240 days and before terminating him no notice was served upon him as required under section 25-F of Industrial Disputes Act, 1947.

12. On behalf of respondents RW-1 Vijay Pal, Deputy Ranger, Shillai was examined and he has stated that the petitioner did not work for 240 days in a calendar year prior to his termination and in the year of 2009, the petitioner himself had abandoned the job. On behalf of respondent, the mandays chart of petitioner Ex. R-1 was also filed which is revealing that prior to 1.4.2009 the petitioner did not complete 240 days in a calendar year. So, there is no legal obligation for the respondent to serve a notice under section 25-F of Industrial Disputes Act, 1947. Hence, there is no violation of section 25-F of Industrial Disputes Act, 1947.

13. However, at the same time, the petitioner has alleged that after his termination junior workmen namely Sita Ram, Bir Singh, Hari Singh and Mangat Ram were retained by the respondent in Shillai range. Although, the witness of respondent RW-1 has stated that no juniors to the petitioner were retained and there is no violation of principle of first come last go by the respondent. But para 22 of the reply of respondent is relevant wherein respondent has stated that the petitioner was irresponsible and his attitude was negligent and he abstained himself from work. As such juniors to him continued working as daily waged workers. This is a specific and clear admission on the part of the respondent. If the petitioner was irregular and remained absent from work, the respondent could have easily issued a show cause notice to him to join the duties but no show cause notice was issued to the petitioner. Thus, it is clear that junior workmen to petitioner were retained by the respondent after his termination. So, taking into consideration the testimony of petitioner as well as para 22 of reply of respondent, I am satisfied that respondent has violated the principles of first come last go and section 25-G of Industrial Disputes Act, 1947 which says whenever any workman is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed. Therefore, if any retrenchment was made in April, 2009, the respondent could have retrenched the junior workman to the petitioner who was retained by the respondent. Therefore, there is clear violation of section 25-G of Industrial Disputes Act, 1947. Consequently, for the aforesaid reasons, the termination of petitioner w.e.f. 1.4.2009 is not sustainable under law and is hereby set aside. Hence, issue no.1 is decided in favour of petitioner.

Issue No. 2

14. For the reason recorded hereinabove while deciding issue No.1, the termination of services of petitioner w.e.f. 1.4.2009 by the respondents is hereby set aside and as such the petitioner is entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 1.4.2009 by the respondents is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of February, 2013.

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

ब अदालत कार्यकारी दण्डाधिकारी (ना0 तह0), तहसील हरोली, जिला ऊना, हिमाचल प्रदेश

हरनाम दास पुत्र श्री सन्त

बनाम

आम जनता

आवेदन—पत्र अधीन धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री हरनाम दास पुत्र श्री सन्त, वासी पालकवाह ने इस न्यायालय में निवेदन किया है कि उसके भाई श्री भगतू की मृत्यु दिनांक 29-12-1997 को हुई थी लेकिन उनकी मृत्यु तिथि ग्राम पंचायत अभिलेख में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 30-3-2013 को प्रातः 10.00 बजे अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर पेश कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर या एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय में प्राप्त बही द्वारा मृत्यु तिथि दर्ज करने हेतु ग्राम पंचायत पालकवाह को आदेश दे दिए जाएंगे।

आज दिनांक 4-3-2013 को मेरे हस्ताक्षर एवं न्यायालय मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (ना0 तह0),
हरोली, जिला ऊना, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी (ना0 तह0), तहसील हरोली, जिला ऊना, हिमाचल प्रदेश

श्री सूरम सिंह पुत्र श्री करतार चन्द

बनाम

आम जनता

आवेदन-पत्र अधीन धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री सूरम सिंह पुत्र श्री करतार चन्द, वासी भडिपारा दुलैहड ने इस न्यायालय में निवेदन किया है कि उसकी माता श्रीमती सरवनी देवी की मृत्यु दिनांक 19-11-2010 को हुई थी लेकिन उनकी मृत्यु तिथि ग्राम पंचायत अभिलेख में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 4-4-2013 को प्रातः 10.00 बजे अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर पेश कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर या एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय में प्राप्त बही द्वारा मृत्यु तिथि दर्ज करने हेतु ग्राम पंचायत भडिपारा दुलैहड को आदेश दे दिए जाएंगे।

आज दिनांक 4-3-2013 को मेरे हस्ताक्षर एवं न्यायालय मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (ना0 तह0),
हरोली, जिला ऊना, हिमाचल प्रदेश।

ब अदालत कार्यकारी दण्डाधिकारी (ना0 तह0), तहसील हरोली, जिला ऊना, हिमाचल प्रदेश

श्री चमन लाल पुत्र श्री भगत राम

बनाम

आम जनता

आवेदन-पत्र अधीन धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री चमन लाल पुत्र श्री भगत राम, वासी गोन्दपुर वूला ने इस न्यायालय में निवेदन किया है कि उसके पुत्र वरुण कुमार का जन्म दिनांक 24-2-1991 को हुआ है लेकिन उसकी जन्म तिथि ग्राम पंचायत अभिलेख में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 4-4-2013 को प्रातः 10.00 बजे अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर पेश कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर या एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय में प्राप्त बही द्वारा जन्म तिथि दर्ज करने हेतु ग्राम पंचायत गोन्दपुर वूला को आदेश दे दिए जाएंगे।

आज दिनांक 4-3-2013 को मेरे हस्ताक्षर एवं न्यायालय मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (ना0 तह0),
हरोली, जिला ऊना, हिमाचल प्रदेश।